IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1590 OF 2005
ALONGWITH
CRIMINAL WRIT PETITION NO. 1591 OF 2005

Mr. M. Sundareswaran ...Petitioner

Versus

The State of Maharashtra & Anr ...Respondents

.....

Mr. R.V. Gangal, Advocate for Petitioner

Mr. S.R. Shinde, in W.P. No. 1590 of 2005 and Mr. Y.S. Shinde, in W.P. No. 1591 of 2005, A.P.Ps. for State.

.....

CORAM: SMT. V.K. TAHILRAMANI, J.

DATE OF RESERVING THE ORDER : 27.06.2005

DATE OF PRONOUNCING THE ORDER : 01.07.2005

P. C.:-

1. Heard the learned advocate for the petitioner-original accused and the learned A.P.P. for the State.

2. The petitioner is seeking quashing of the proceedings relating to C.B.I. Special Case No. 46 of 1986 and 47 of 1986 in which he is facing prosecution. The said cases under Sections 420, 467, 471 r.w. Section 5(i) and 4(2) of the Prevention of Corruption Act, 1988 are pending trial before the

learned Special Judge for C.B.I. for Greater Mumbai.

3. The petitioner had also preferred an application for discharge, before the learned Special Judge. The said application came to be rejected by order dated 2.5.2005. The learned advocate for the petitioner has submitted that the said order is erroneous and deserves to be set aside. The application was preferred only on the limited ground that no prior sanction was obtained for prosecution of the petitioner and hence on this count alone, the prosecution was illegal and proceedings relating to the same deserves to be quashed.

4. The petitioner was the Branch Manager of Oriental Bank of Commerce, Dadar Branch in the year 1984 i.e. at the relevant time. The learned advocate for the petitioner has submitted that earlier legal position was that the Manager of a Nationalised Bank is not a public servant and hence, sanction was not necessary to prosecute such person. However, it is submitted that the Hon’ble Supreme Court in the recent ruling has held that all Bank employees are public servants. It is submitted that in view of this decision a Bank Manager would be governed by the Prevention of Corruption Act, hence in such case sanction would be necessary to prosecute such officer. It is further submitted that as prior sanction was not obtained the

prosecution is illegal and deserves to be set aside.

5. It was submitted by the learned advocate for the petitioner that it was contended by C.B.I. that at the relevant time the petitioner had been terminated and as such at the relevant time he was not a public servant hence, there was no question of obtaining sanction. Mr. Gangal submitted that the said stand is incorrect because the petitioner had challenged his termination order and by order of this Court dated 4.3.1986 the petitioner came to be reinstated. Thus on 31.7.1986 i.e. on the date when the charge sheet was filed against the petitioner, the termination order had been set aside and as such the petitioner was a public servant. Hence, it is submitted that sanction ought to have been obtained before prosecuting him.

6. In view of the above submissions, it is seen that in the present case the only limited ground is whether prior sanction was necessary to prosecute the petitioner or not, no other ground has been raised on behalf of the petitioner. As stated earlier, the sole contention raised by the learned advocate for the petitioner is that the petitioner being "public servant" sanction under Section 197 Cr.P.C. was necessary and as no sanction has been obtained in the present case the prosecution ought to be quashed.

7. In State of H.P. Vs. M.P. Gupta, the Supreme Court has observed thus ;-

> " The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause...."

8. It would be pertinent to note the observations of the Supreme Court in the later paragraphs of the very same judgment which are reproduced below :

> " That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B IPC sanction under Section 197 of the Code is a condition

precedent for launching the prosecution is equally fallacious. This court has stated the legal position in Shreekantiah Ramayya Munipalli case and also Amrik Singh case that it is not every offence committed by a public servant which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad V. State of Bihar as follows (SCC P. 115 para 66):

" As far as the offence of criminal conspiracy punishable under Section 120-B read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar.

> . Above views are reiterated in State of Kerala Vs. V. Padmanabhan Nair. Both Amrik Singh and Shreekantiah were noted in that case. Sections 467, 468 and 471 IPC relate to forgery of valuable security, Will etc. forgery for the purpose of cheating and using as a genuine a forged document respectively. It is no part of the duty of a public servant while discharging his official duties to commit forgery of the type covered by the aforesaid offences. Want of sanction under Section 197 of the Code is, therefore, no bar."

9. The learned A.P.P. has placed reliance on the decision of the Supreme Court in the case of S.K. Zutshi & Anr. Vs. Bimal Debnath & Anr. reported in AIR 2004 SC 4174. In the said case, it is observed that when an offence by a public servant is not in discharge of his official duty, in such case sanction to prosecute would not be necessary. Learned A.P.P. has submitted that question whether the accused has acted in his official course of duty or not and whether, therefore, sanction would be necessary or not, should be left open to be decided in the main judgment which may be delivered upon conclusion of

trial. In support of this contention, learned A.P.P. has placed reliance on the decision of the Supreme Court in the case of Raj Kishor Roy Vs. Kamleshwar Pande & Anr. reported in AIR 2002 SC 2861 wherein these very observations are made in paragraphs 11 and 12.

10. From the decision in the case of State of H.P. Vs. M.P. Gupta (Supra), it is clear that the sanction to prosecute would not be necessary in the cases under Sections 467, 468, 409 I.P.C. and Section 5(2) of the Prevention of Corruption Act. The offences which the petitioner is facing are of similar nature. In view of the observations in the above-cited judgments, sanction to prosecute may not be necessary. However, even assuming that sanction is necessary, the question whether the petitioner has acted in official course of duty or not and whether, therefore, sanction is necessary or not, in my view in the light of the observations of the Supreme Court in the case of Rajkishor Roy Vs. Kamleshwar Pandey (supra), should be left open to the decided in the main judgment which may be delivered on conclusion of the trial.

11. Looking to the legal position, no case is made out for interference, I find no merit in these petitions. Writ petitions are rejected.

*****